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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,706	06/27/2007	Martin Scheffler	20496-490	4128

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PROSKAUER ROSE LLP
ONE INTERNATIONAL PLACE
BOSTON, MA 02110

EXAMINER

KASTLER, SCOTT R

ART UNIT	PAPER NUMBER
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1793

MAIL DATE	DELIVERY MODE
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07/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/550,706	Applicant(s) SCHEFFLER ET AL.	
	Examiner Scott Kastler	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Interpretation

The instant claims 1, 5, 6 10, 11 and 12 contain the terms “possibly” and “particularly”. These terms are interpreted to recite only optional features in the above claims. Accordingly the terms following either of "possibly" or "preferably" have been treated as only non-limiting preferred embodiments of the above claims .

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The above claims are confusing and indefinite since the claims recite that the “annealing baskets” are to be fixed on the “annealing rack element”. However, as stated in claim 1, from which this claims depend, the annealing basket is the same as the annealing rack element (claim 1 recites that the annealing element is at least one annealing basket) thereby requiring that the annealing basket be fixed to itself.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,558,615

B1 to Jungblut (Jungblut). Jungblut teaches an annealing basket (10), which is all that is the only required element of the instantly recited annealing rack, which could be stacked (this being a limitation as to the manner or method of use of the claimed apparatus and met by any prior art device which could be employed in the recited manner, see MPEP 2114), and including a bottom, meeting the limitation of a “rest”, with corner supports (12) projecting upwardly from the bottom, where the corners are connected to one another with “rack struts” (26) detachably and with a degree of “play” (the basket of Jungblut is expandable), thereby showing all aspects of the above claims.

Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2,430,521 to McCormick (McCormick). McCormick teaches an annealing basket (Figure 1 for example), which is all that is the only required element of the instantly recited annealing rack, which could be stacked (this being a limitation as to the manner or method of use of the claimed apparatus and met by any prior art device which could be employed in the recited manner, see MPEP 2114), and including a bottom, with a “rest”, and corner supports projecting upwardly from the bottom, where the corners are connected to one another with “rack struts” detachably and with a degree of “play” (see col. 7 lines 20-25 for example), thereby showing all aspects of the above claims.

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Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,290,753 to Klefisch (Klefisch). Klefisch teaches an annealing basket (Figure 1), which is all that is the only required element of the instantly recited annealing rack, which could be stacked (this being a limitation as to the manner or method of use of the claimed apparatus and met by any prior art device which could be employed in the recited manner, see MPEP 2114), and including a bottom (12), a “rest”, with corner supports projecting upwardly from the bottom, where the corners are connected to one another with “rack struts” detachably and with a degree of “play” thereby showing all aspects of the above claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Kastler whose telephone number is (571) 272-1243. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott Kastler/
Primary Examiner, Art Unit 1793

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